

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO**

In re: FRED DALE VAN WINKLE,

Debtor.

)
)
)

No. 13-11743-j7
Chapter 7

MOTION FOR RELIEF FROM AUTOMATIC STAY
--

Martin, Dugan & Martin

W. T. Martin, Jr.

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COME NOW Belleview Valley Land Co., Inc., John H. Williams and Ellen B. Williams (*hereinafter jointly referred in the singular to as "Williams"*) by and through their attorney, W. T. Martin, Jr., of Martin, Dugan & Martin, and pursuant to Williams' *Motion for Relief from Automatic Stay* states:

Williams files this motion for relief from automatic stay and pursuant to **NM LBRS 4001-1.3** presents the following:

1. On August 13, 2010, the Otero County District Court, in Otero County Cause Number CV-2008-76-Div. II, entered a Final Judgment in Williams's favor and against the Debtor, Fred Dale Van Winkle (*hereinafter referred to as "Debtor"*).
2. On August 13, 2010, the Otero County District Court entered a Final *Judgment in* favor of Williams and against the Debtor in the amount of \$234,944.31. The judgment's interest rate is 8.75% per annum calculated from date of entry of the judgment, which is a per diem accrual of \$56.32. (*A copy of the Final Judgment is attached to this Motion as Exhibit "A."*)
3. On February 4, 2011, the Otero County District Court entered an *Order Awarding Attorney Fee* in favor of Williams and against the Debtor in the amount of \$17,711.93, which is earning interest at the rate of 8.75% since the date of the Order, which is a per diem accrual of \$4.25. (*A copy of the Order Awarding Attorney Fees is attached to this Motion as Exhibit "B."*)
4. On August 17, 2010, Williams filed a *Transcript of Judgment* in Otero County. The *Transcript of Judgment* was filed in the Records of Otero County in Instr.# 201007605.
 - a. The filing of the *Transcript of Judgment* created a judgment lien on real property the Debtor owned in Otero County, New Mexico.

5. On August 17, 2010, Williams recorded a *Transcript of Judgment* reflecting the judgment with the County Clerk of Otero County, New Mexico. (A copy of the *Transcript of Judgment* is attached as *Exhibit "C"* and is incorporated herein as if fully set forth.)
 - a. The filing of the *Transcript of Judgment* created a judicial lien against any real property in which Fred owned an interest in Otero County, New Mexico.
6. On August 17, 2010, Williams recorded a *Transcript of Judgment* reflecting the judgment with the County Clerk of Lincoln County, New Mexico. (A copy of the *Transcript of Judgment* is attached as *Exhibit "D"* and is incorporated herein as if fully set forth.)
 - a. The filing of the *Transcript of Judgment* created a judicial lien against any real property in which Fred owned an interest in Lincoln County, New Mexico.
7. Williams filed suit in Otero County District Court to foreclose the judgment lien. (A copy of the Complaint without exhibits is attached to this Motion as *Exhibit "E"* and is incorporated as if fully set forth.) The foreclosure suit was stayed upon the Debtor's filing for relief under Chapter 7 of the Bankruptcy Act.
 - a. Williams's judgment lien is a first lien on the Otero County property. At the time Williams filed the suit to foreclose the judgment lien, there were no other liens.
8. More than one (1) year has passed between the filing of the *Transcript of Judgment* and the Debtor's filing for relief under Chapter 7 of the Bankruptcy Act.
 - a. Williams is a secured creditor holding a lien on all of the Debtor's real property in Otero County, New Mexico, which is more particularly described *Exhibit "F"* attached to this Motion.

9. The 30 acres listed in the Debtor's schedule is adjoining the 7.1060 acres listed in his schedule. The 30 acres is raw land on the south side of Tularosa toward Alamogordo. The improvements consists primarily of a mobile home and some fencing. The value the Debtor placed on the 30 acres, \$230,000.00, reflects the approximate purchase price for which he sold the land to Williams. That is a value of \$7,666.66 per acre. That value should carry over to the 7.1060 acres, which results in a market value of \$54,479.29 for the 7.1060 acres. This results in an approximate value totaling \$284,479.00.
10. The *Final Judgment* has earned interest in the approximate amount of \$62,672.88. The awarded attorney fees have earned interest in the approximate amount of \$3,874.48. When the total judgment, attorney fees and interest are added together, it totals approximately \$319,203.60. This amount continues to grow. There is no equity in the Otero County property.
11. Pursuant to 11 U.S.C.A. §362(d)(2)(A), Williams, as a secured creditor, is entitled to an Order from this Court lifting the automatic stay in order to allow Williams to continue with the foreclosure suit in Otero County District Court.
12. The Trustee has been contacted. The Trustee does not oppose this Motion and consents to the relief requested subject to this Court ordering that any proceeds in excess of the secured lien shall be turned over to the estate.
13. Counsel for the Debtor has been contacted. The Debtor opposes the Motion.

Martin, Dugan & Martin



By _____

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e-mail: martinlaw@zianet.com
Attorney for Bellevue & Williams

CERTIFICATE OF SERVICE

I CERTIFY that the foregoing Motion was electronically filed with the Court by means of the CM/ECF system. All attorneys and parties identified with the Court for electronic service on the record in this case were served by electronic service in accordance with CM/ECF system on this 30th day of August 2013.



W. T. Martin, Jr.

**TWELFTH JUDICIAL DISTRICT COURT
COUNTY OF OTERO
STATE OF NEW MEXICO**

FILED
CLERK

10 AUG 13 PM 2:47

JAN PERRY
CLERK BY

FRED VAN WINKLE and BRIAN VAN WINKLE,)

Plaintiffs,)

vs.)

BELLEVUE VALLEY LAND CO, a New Mexico)
corporation, and **John Williams** and **ELLEN B.**)
WILLIAMS, husband and wife,)

Defendants.)

No. CV-2008-76
Div. II

FINAL JUDGMENT

SUBMITTED BY:

MARTIN, DUGAN & MARTIN

W. T. Martin, Jr.

509 W. Pierce St.

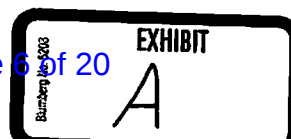
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e-mail: martinlaw@zianet.com



THIS MATTER having previously come on for trial before this Court and this Court having entered its *Minute Order* on July 10, 2010 in which it made its Findings of Fact and Conclusions of Law. Now, therefore in conformity with the *Minute Order*:

IT IS ORDERED, ADJUDGED AND DECREED THAT:

1. That the sale of the real property by Fred Van Winkle, and his son, Brian Van Winkle, acting as a straw man/conveyor or pass through/conveyor, to Belleview Valley Land Co., be and it hereby is rescinded.

- a. Title to the real property is restored to Fred Van Winkle, as his sole and separate property. The legal description of the real property is as follows:

A tract of land in the Northeast Quarter (NE ¼) of Section 24, T15S, R9E, NMPM, Otero County, New Mexico, described metes and bounds as follows:

Beginning at the East One-Quarter corner (E ¼) of Section 24 and going S 89°51'38" W along the East/West centerline of said Section 24, a distance of 1525.75 feet; Thence N 00°37'16" W, a distance of 858.92 feet; Thence S 89°50'08" E, a distance of 1531.80 feet; Thence S 00°13'11" E, a distance of 850.76 feet to the said place of beginning.

Included in this conveyance is that certain Well and all water rights appurtenant thereof which is located on the above described property.

- 2. That judgment be, and it hereby is, entered in favor of the Defendants and against Fred Van Winkle in the amount of \$234, 944.31.
 3. That Defendants be, and they hereby are, awarded their costs.
 4. That Defendants be, and they hereby are, awarded their attorney fees. Defendants' attorney, W. T. Martin, Jr. shall submit documentation showing the attorney fees the defendants incurred within 15 days of the date of entry of this *Final Judgment*. Fred Van Winkle shall have 15 days thereafter to file any objection they may have to the

Defendants' submission. If objection is filed, this Court will determine whether a hearing is necessary and give notice of the time, date and place of the hearing.

5. The amounts awarded in this *Final Judgment* shall earn interest at the rate of 8.75% per annum until this *Final Judgment* is fully paid.
6. The Defendants shall be accorded thirty (30) days from the date of this *Final Judgment* to vacate the real property.
7. The Plaintiffs claim for reformation of the transaction is denied.

3/ JAMES WAYLON COUNTS

James Waylon Counts, District Judge

APPROVED AS TO FORM:

MARTIN, DUGAN & MARTIN



By _____
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Attorney for the Defendants

Richard A. Hawthorne, P.A.

By Approved by E-Mails 8/11 & 12/2010

**Richard A. Hawthorne
1221 Mechem Drive, Suite 2
Ruidoso, New Mexico 88345
(575) 258-3483
(575) 258-5389
Attorney for Plaintiffs**

FILED
DISTRICT COURT OF
OTERO COUNTY, N.M.

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**TWELFTH JUDICIAL DISTRICT COURT
COUNTY OF OTERO
STATE OF NEW MEXICO**

JAN PERRY
CLERK BY _____

FRED VAN WINKLE and BRIAN VAN WINKLE,)

Plaintiffs,)

vs.)

BELLEVUE VALLEY LAND CO, a New Mexico)

corporation, and **John Williams and ELLEN B.**)

WILLIAMS, husband and wife,)

Defendants.)

No. CV-2008-76
Div. II



SUBMITTED BY:

MARTIN, DUGAN & MARTIN

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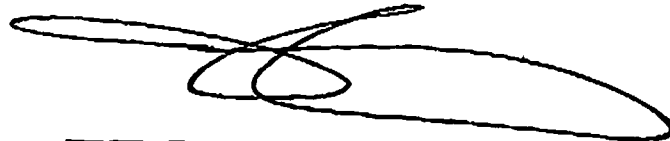
EXHIBIT

B

THIS MATTER having come on for telephonic hearing on Defendants' *Motion to Set Amount of Attorney Fee Award* on January 14, 2011 at 4:30 pm. Plaintiff appeared by and through his attorney, Richard Hawthorne, who appeared telephonically. (*Fred Van Winkle and Brian Van Winkle were present in the courtroom.*) Defendant appeared by and through his attorney, W.T. Martin, Jr., who appeared telephonically. This Court reviewed the applicable portion of the record and the Motions. In addition, this Court heard arguments by counsel for Plaintiff and Defendant. Being fully advised, this Court has determined Defendants' attorney fee award should be as follows:

IT IS ORDERED, ADJUDGED AND DECREED THAT:

1. Defendants are awarded \$16,505.00 in attorney fees plus New Mexico Gross Receipts Tax at 7.3125%, which is \$1,206.93 for a total award of \$17,711.93.
2. The award shall earn interest at the statutory rate of 8.75% from date of award until fully paid.

A handwritten signature in black ink, consisting of a large, stylized 'J' followed by a horizontal line and a loop.

James Waylon Counts, District Judge

APPROVED AS TO FORM:

MARTIN, DUGAN & MARTIN



By _____
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Attorney for the Defendants

Richard A. Hawthorne, P.A.

By Approved by e-mail 1/14/11
Richard A. Hawthorne
1221 Mechem Drive, Suite 2
Ruidoso, New Mexico 88345
(575) 258-3483
(575) 258-5389
Attorney for Plaintiffs

**TWELFTH JUDICIAL DISTRICT COURT
COUNTY OF OTERO
STATE OF NEW MEXICO**

FILED
DISTRICT COURT
OTERO COUNTY, N.M.

2010 AUG 17 PM 1:25

JAN PERAY

TRANSCRIPT OF JUDGMENT

CLERK _____ BY _____

CASE NUMBER: CV-2008-76 DIV. II

NATURE OF ACTION: Counterclaim for Violation of Subdivision Act

JUDGMENT CREDITORS: Belleview Valley Land Co., John Williams and Ellen Bl. Williams

JUDGMENT DEBTOR: FRED VAN WINKLE

AMOUNT OF JUDGMENT

DAMAGES	COSTS	TOTAL	RATE OF INTEREST
\$234,944.31 plus Attorney Fees to be determined by the Court.	\$640.99	\$235,585.30 + costs plus Attorney Fees to be determined by the Court.	8.75% per annum calculated from July 23, 2010.

DATE OF JUDGMENT:

HOW SATISFIED & REMARKS

August 13, 2010	
ATTORNEY FOR JUDGMENT CREDITOR:	
W. T. Martin, Jr. Martin, Dugan & Martin 509 W. Pierce St. P.O. Box 2168 Carlsbad, NM 88221-2168 (575) 887-3528 Fax (575) 887-2136	

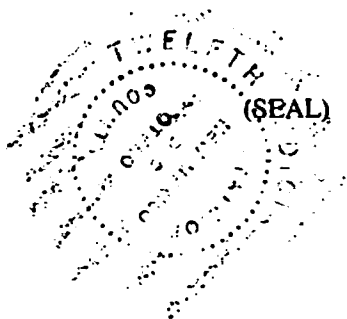
EXHIBIT

I, Jan Perry, Clerk of the District Court of the Twelfth Judicial District of the State of New Mexico, within and for the County of Otero, do hereby certify the foregoing to be a true transcript of the judgment of said Court, now of record in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and Seal of said Court this 17 day of August, 2010.

JAN PERRY
CLERK OF THE DISTRICT COURT

By: [Signature]
Deputy



REC DATE 8/17/10 REC TIME 1:38:34 PM INSTR# 201007605 CLK [Signature]
OTERO COUNTY ROBYN HOLMES COUNTY CLERK PAGE 2 OF 2

**TWELFTH JUDICIAL DISTRICT COURT
COUNTY OF OTERO
STATE OF NEW MEXICO**

CLERK OF DISTRICT COURT OF
OTERO COUNTY, N.M.
2010 AUG 17 PM 1:25
JAN PERRY

TRANSCRIPT OF JUDGMENT

CLERK _____ BY _____

CASE NUMBER: CV-2008-76 DIV. II

NATURE OF ACTION: Counterclaim for Violation of Subdivision Act

JUDGMENT CREDITORS: Belleview Valley Land Co., John Williams and Ellen Bl. Williams

JUDGMENT DEBTOR: FRED VAN WINKLE

AMOUNT OF JUDGMENT

DAMAGES	COSTS	TOTAL	RATE OF INTEREST
\$234,944.31 plus Attorney Fees to be determined by the Court.	\$640.99	\$235,585.30 + costs plus Attorney Fees to be determined by the Court.	8.75% per annum calculated from July 23, 2010.

DATE OF JUDGMENT:

HOW SATISFIED & REMARKS

August 13, 2010	
ATTORNEY FOR JUDGMENT	
CREDITOR:	
W. T. Martin, Jr. Martin, Dugan & Martin 509 W. Pierce St. P.O. Box 2168 Carlsbad, NM 88221-2168 (575) 887-3528 Fax (575) 887-2136	

LINCOLN COUNTY - NM
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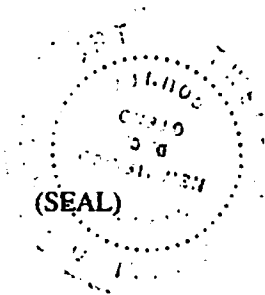
EXHIBIT

Exhibit 128

D

I, Jan Perry, Clerk of the District Court of the Twelfth Judicial District of the State of New Mexico, within and for the County of Otero, do hereby certify the foregoing to be a true transcript of the judgment of said Court, now of record in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and Seal of said Court this 17 day of August, 2010.



JAN PERRY
CLERK OF THE DISTRICT COURT

By: [Signature]
Deputy

LINCOLN COUNTY-NM
NINA B HERRON, CLERK
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TWELFTH JUDICIAL DISTRICT COURT
COUNTY OF LINCOLN
STATE OF NEW MEXICO

COPY

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CLERK OF COURT

BELLEVIEW VALLEY LAND CO. a New Mexico)
corporation, and John Williams and ELLEN B.)
WILLIAMS, husband and wife,)

Plaintiffs,)

vs.)

FRED VAN WINKLE,)

Defendant.)

No. CV-2011-222

COMPLAINT TO FORECLOSE JUDGMENT LIEN

M

D

M

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EXHIBIT

Exhibit No. 500

COME NOW Belleview Valley Land Co. ("BVL"), John Williams and Ellen B. Williams (jointly referred to as "Williams") by and through their attorney, W. T. Martin, Jr., of Martin, Dugan & Martin and for their *Complaint to Foreclose Judgment Lien* states:

1. BVL is a Missouri corporation authorized to conduct business in New Mexico. Williams are now residents of the State of Missouri.
2. **Fred Van Winkle ("Fred")** is a resident of Lincoln County, New Mexico.
3. On August 13, 2010, BVL and the Williams obtained judgment against Fred in the amount of \$243,944.31 in Otero County Cause Number CV-2008-76-Div. II. On February 4, 2011, the Court subsequently awarded Defendants attorney fees as follows: (i) \$16,505.00; (ii) N.M. Gross Receipts Tax of \$1,206.93; (iii) interest on the award of attorney fees and tax at the rate of 8.75% from date of award. (Copies of the *Final Judgment* and *Order Awarding Attorney Fees* is attached as *Exhibits "A & B"*).
4. On August 17, 2010, BVL and Williams recorded a *Transcript of Judgment* reflecting the judgment with the Lincoln County Clerk of Lincoln County, New Mexico. (A copy of the *Transcript of Judgment* is attached as *Exhibit "C"* and is incorporated herein as if fully set forth.)
5. The filing of the *Transcript of Judgment* created a lien against any real property in Lincoln County, New Mexico in which Fred owned an interest.
6. As of the date of the filing of the *Transcript of Judgment*, Fred owned the real estate situate and lying in Lincoln County, New Mexico described in *Exhibit "D"* attached to this Complaint.

7. The judgment remains unsatisfied. BVL and Williams are entitled to foreclose the real estate described in *Exhibit "C."*
8. BVL and Williams pray that judgment be entered in their favor granting foreclosure and allowing sale of the real property to satisfy all or a portion of the judgment owed by BVL and Williams.

WHEREFORE, BVL and Williams pray that that they be allowed to foreclose their judgment lien and that the property described in *Exhibit "C"* be sold by a Special Master according to New Mexico law to satisfy all or a portion of the Final Judgment entered by the Otero County District Court in Cause Number CV-2008-76-Div. II. BVL and Williams further pray that they be awarded their costs and attorney fees.

Martin, Dugan & Martin



By _____
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575-887-2136 (facsimile)
e-mail: martinlaw@zianet.com
Attorney for BVL and the Williams

Apartment 11, Building D, PALISADES CONDOMINIUM PROJECT, PHASE II, Ruidoso, Lincoln County, New Mexico, as shown by the plat plan thereof filed in the office of the County Clerk and Ex-officio Recorder of Lincoln County, New Mexico, August 16, 1973, in Tube No. 490, and as further set forth, established and identified by those certain Declarations, recorded in Miscellaneous Book 40, pages 967 to 993, both inclusive

